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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,292	12/23/2004	Guido Knobel	04-605	9139
34704	7590	06/23/2008		
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			EXAMINER	
			BODAWALA, DIMPLE N	
		ART UNIT	PAPER NUMBER	
		1791		
		MAIL DATE		DELIVERY MODE
		06/23/2008		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,292	<b>Applicant(s)</b> KNOBEL, GUIDO
	<b>Examiner</b> DIMPLE N. BODAWALA	<b>Art Unit</b> 1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 April 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 18-24 is/are pending in the application.

4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 18-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/146/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 13-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected process for producing consumable products, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/25/2008.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Oath/Declaration***

3. Current application is missing Oath/declaration form.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 19 is vague and indefinite because it is unclear about the meaning of “the starting position”, wherein the limitation “in the starting position” also lacks sufficient antecedent basis in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**8. Claims 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Aasted (EP 0 920 810).**

9. As to claims 18-19, Aasted discloses device or apparatus for the production of confectionary product which comprises shell (6) having a core as a temperature controlled ram and a cavity (3) (See paragraph # 27), wherein temperature controlled ram having an axial bore, in which the displacement ram (21) is guided, wherein the displacement ram is retracted slightly into the bore during the starting position (See paragraph # 31).

10. As to claim 20, it further teaches that the apparatus or shell comprises at least one tube (15), bore or the like, which is in communication with the

gas connection, passes through the temperature controlled ram (See paragraph # 27; figure 4).

11. As to claim 21-22, it further teaches that the closure means with spring means is extending peripherally around the core member, which inherently suggests that the temperature controlled ram is at least partially elastic and surrounds an interior space of the core into which the pressure medium is applied through the tube (15) (See figure 4, paragraph # 13). It further teaches that the temperature of the core member could be controlled to be equal or lower than 0 degree C (See paragraph # 27), which inherently suggests that the pressure medium is a cooling medium.

12. Aasted discloses all claimed structural limitations as discussed above, and, thus the claims are anticipated.

**13. Claims 18-19 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Aasted (US 5,635,230).**

14. Aasted ('230) discloses an apparatus for producing product which comprises, an outer shell (1), displacement arm, temperature controlled ram, wherein temperature controlled ram comprises axial bore in which the displacement arm is guided (See figure 1). It further teaches that the system comprises means for controlling the up and down movement of the shell (See

col.3 lines 50-54), which inherently suggests that the displacement ram of the shell is retracted into the axial bore.

15. It further teaches that the body of the shell is made of thermoplastic material (See col.2 lines 46-47) and engagement ring (4) may also be mounted axially spring-loaded, e.g., by means of a rubber insert (See col.5 lines 1-3), which inherently suggests that the temperature controlled ram is at least partially elastic and surrounds an interior space into which a pressure medium is applied, wherein pressure medium is a cooling medium (See col.3 lines 400-64).

16. Aasted ('230) discloses all claimed structural limitations as discussed above, and, thus the claims are anticipated.

**17. Claims 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Aasted (EP 0 945 069).**

18. As to claims 18-19, Aasted discloses an apparatus for the production of confectionary products which comprises shell having core member (6) and a molded element or cavity (2), wherein core member is known as temperature controlled ram (6) (See paragraph # 41), wherein the temperature controlled ram comprises axial bore for receiving the slide guidance (8) as a displacement ram, wherein the displacement ram is retracted slightly into the bore during the starting position (See paragraph # 43-44).

19. As to claim 20, it further teaches that the apparatus or shell comprises at least one tube (12), bore or the like, which is in communication with the gas connection, passes through the temperature controlled ram (See paragraph # 41, 54; figure 6).

20. As to claims 21-22, it further teaches that the temperature controlled ram by having spring means, which inherently suggests to be at least partially elastic and surrounds an interior space of the core into which the pressure medium is applied through the tube (See figure 13). It further teaches that the temperature of the core member could be controlled to be equal or lower than 0 degree C (See paragraph # 41, 54), which inherently suggests that the pressure medium is a cooling medium.

21. Aasted discloses all claimed structural limitations as discussed above, and, thus the claims are anticipated.

**22. Claims 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Knobel (WO 98/52425).**

23. Knobel discloses an invention for producing confectionary product which comprises, shell having temperature controlled ram with axial bore, wherein the displacement ram is disposed for retracting slightly into the bore (See figure 3), wherein figure 3 further teaches that the temperature

controlled ram comprises tube or bore which is in communication with the gas connection , passes through the temperature controlled ram.

24. Knobel discloses all claimed structural limitations as discussed above, and, thus the claims are anticipated.

***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

26. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

27. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aasted (EP 0 945 069) in view of Austin (US 4,076,207).

28. Aasted discloses all claimed structural limitations as discussed above, but fails to teach or suggest a diaphragm.

29. Austin discloses food mold which comprises holder of shell with an opening nearby lower end of the holder, which is covered by web (31) as a diaphragm (See figure 1-2), wherein figure 3 teaches that the diaphragm is curved inward in starting position and curved outward, when the pressure medium is applied (see figure 3).

30. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Aasted by providing web or diaphragm of Austin because such alignment is involved to release the molded product from the molding element.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIMPLE N. BODAWALA whose telephone number is (571)272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PHILLIP C. TUCKER can be reached on (571) 272-

1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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